COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1548 of 2001

Smt. Prabha Devi & others ... **Appellants.**

Versus

Divisional Manager,
New India Assurance Co.Ltd.
and another. …. **Respondents.**

Mr. N.S.Negi, learned counsel for the appellants.
Mr. Tanveer Alam Khan, Advocate, learned counsel for respondent no. 1.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 28-09-2001, passed in M.A.C.T. Case No. 59 of 1996, Smt. Prabha Devi and others Vs. Divisional Manager, New India Assurance Co. Ltd. and another, by the Motor Accident Claims Tribunal/District Judge, Almora ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 3,20,000/- in favour of the claimants-appellants, as against the Opposite Party No. 1-respondent no.1. Aggrieved, the claimant-appellants have come up in appeal with a prayer of modifying the impugned judgment and award thereby granting interest to them.

Brief facts giving rise to the present appeal are that on 22.2.1995, deceased Puran Singh husband of the appellant no.1 was travelling by Jeep No. UP 01-1489 and the driver of the Jeep Chandan Singh was driving the vehicle rashly and negligently. The driver was requested several times by the deceased not to drive the vehicle in negligent manner but to no avail. At about 7.30 p.m.

near village Tolyu-Harada, Talla Salt, the said vehicle overturned with the result said Puran Singh received grievous injuries and succumbed to his injuries. It is alleged that the deceased was the over of the vehicle in question and was earning Rs. 3000/- per month besides doing the business of contract etc. thereby earning 3500/- extra. He was aged 36 years at the time of his death. The vehicle was duly insured with the Company-respondent no.1. Claimant-appellants being the legal heirs and dependents of the deceased have filed the petition claiming Rs. Ten lacs as compensation for the death of the deceased.

The Insurance Company contested the claim petition by filing its written statement. It has denied the allegations made in the petition and has pleaded that the deceased Puran Singh being owner of the vehicle was not a passenger, therefore, claimants are not entitled to get any compensation. It has also been pleaded the terms and condition of the Insurance Policy have been violated. Income of the deceased has been mentioned without any basis and has been shown excessive.

On the pleadings of the parties, the learned Tribunal framed three issues in the case. ***Issue No.1*** related to the rash and negligent driving by the driver of Jeep in question resulting into injuries and consequent death of the deceased in the motor accident. ***Issue Nos. 2 and 3*** related to the relief.

Before the Tribunal, the claimant-appellants have filed copy of Post Mortem Report of the deceased, Cover Note of Policy of the jeep involved in the accident, besides carbon copy of F.I.R., copy of driving licence and original Insurance Policy. In oral evidence the claimant-appellants have produced as many as three witnesses, namely, Prabha Devi, the claimant no.1 as P.W.1, Pawan Kumar as P.W. 2 and Anand Singh as P.W.3. Insurance Company has not adduced any oral evidence.

After hearing both the parties and going through the material available before the Tribunal, the learned Tribunal took all the three issues together for disposal. Learned Tribunal came to the conclusion that the accident was the result of rash and negligent driving by the driver of the alleged Jeep and decided the Issue No.1 in favour of the claimant and against the opposite parties. On Issue Nos. 2 and 3, after dealing with the contentions of both the parties in detail, the Tribunal found that the claimants-appellants are entitled to get compensation. As regards income of the deceased, after considering the oral and documentary evidence on record, the learned Tribunal was of the view that the income of the deceased was Rs. 2500/-per month. It was thus held that the annual income of the deceased was Rs.30,000/- and the annual loss of dependency was held to be Rs. 30,000/-. The age of the deceased was found to be about 39 years at the time of death, therefore, multiplier of 16 was applicable in accordance with the Second Schedule of Section 163-A of the Motor Vehicles Act, 1988. Total loss due to death of Puran Singh was worked out as Rs. 3,20,000/-(three lacs twenty thousand) and accordingly, the learned Tribunal has awarded the said amount as compensation in favour of the claimant-appellants and against the Insurance Company-respondent No.1.

We have heard the learned counsel for the appellants as well as learned counsel for the Insurance Company, respondent no.1.

The only contention raised on behalf the appellants before us is that the learned Tribunal has failed to consider the provisions of Section 171 of the Act and has not awarded any interest on the compensation amount. We have gone through the entire material on record including the impugned judgment and award. We are of the consistent view that the claimant-appellants were also entitled to get interest on the compensation amount. In

the facts and circumstances of the case, it will be just and proper to meet the ends of justice to award Interest at the rate of 6% per annum on the amount of compensation, i.e. Rs. 3,20,000/- from the date of filing of claim petition till the date of payment. To this extent alone, the findings and order of the learned Tribunal, appealed against, deserve to be modified.

Accordingly, the appeal is allowed. The claimants-appellants are awarded interest at the rate of 6% per annum, as observed above, on the amount of Rs. 3,20,000/- awarded by the learned Tribunal. The order under appeal is modified to this extent. With this modification, the appeal is disposed of finally. No order as to costs.

16-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP